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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 JOHNIE EDWARD, JR.,) Case No. CV 18-3068-RGK (JPR)
12)
13 Plaintiff,)
14) ORDER DISMISSING ACTION FOR
15 v.) FAILURE TO TIMELY AND PROPERLY
16) SERVE COMPLAINT AND FAILURE TO
17) PROSECUTE
18)
19 DEP'T OF CHILD SUPPORT)
20 SERVS. et al.,)
21)
22 Defendants.)

23
24 On April 12, 2018, Plaintiff filed a paid Complaint raising
25 claims under 42 U.S.C. § 1983, among others, apparently against
26 both the County of Los Angeles and its Department of Child
27 Support Services. On April 16, the Court ordered Plaintiff to
28 serve the Complaint within the 90 days allotted by Federal Rule
of Civil Procedure 4(m) or risk having it dismissed. On July 16,
Plaintiff filed an unsigned proof of service, purporting to have
served the Department of Child Support Services as well as, in
another place on the form, "Los Angeles County/Department of
Child Support Services."

On August 6, the Defendant agency filed notice that
Plaintiff's service upon it was ineffective because he did not
serve "notices of acknowledgment and receipt" or an "envelope for

1 return with postage prepaid." (Def.'s Notice at 2.) The agency
2 stated that "Plaintiff may re-serve with the two notices of
3 acknowledgment and receipt and envelope with postage prepaid" or
4 "[a]lternatively, Plaintiff may send a waiver of service, which
5 will be promptly returned." (Id.)

6 On September 6, the Magistrate Judge ordered Plaintiff to
7 show cause in writing why the Complaint (and this action) should
8 not be dismissed for failure to properly serve either named
9 Defendant. See Fed. R. Civ. P. 4(m) ("If a defendant is not
10 served within 90 days after the complaint is filed, the court –
11 on motion or on its own after notice to the plaintiff – must
12 dismiss the action without prejudice against that defendant or
13 order that service be made within a specified time."). The
14 Magistrate Judge explained to Plaintiff the deficiencies in his
15 service, and she had previously notified him that help was
16 available from one of the district's pro se clinics.
17 Nonetheless, Plaintiff has not timely responded to the OSC in any
18 way, and the Court has before it no evidence that he ever
19 corrected his deficient service on the Defendant agency or
20 separately served Los Angeles County. The Magistrate Judge
21 warned Plaintiff that if he failed to respond to the OSC, "his
22 lawsuit may be dismissed for that reason alone."

23 Indeed, Plaintiff's failure to respond to the Court's orders
24 brings this case within the purview of Carey v. King, 856 F.2d
25 1439, 1441 (9th Cir. 1988), which examined when it is appropriate
26 to dismiss a lawsuit for failure to prosecute. See also Link v.
27 Wabash R.R., 370 U.S. 626, 629–30 (1962) ("The power to invoke
28 [dismissal] is necessary in order to prevent undue delays in the

1 disposition of pending cases and to avoid congestion in the
2 calendars of the District Courts.").

3 In deciding whether to do so, a court must consider "(1) the
4 public's interest in expeditious resolution of litigation; (2)
5 the court's need to manage its docket; (3) the risk of prejudice
6 to the defendants; (4) the public policy favoring disposition of
7 cases on their merits[;] and (5) the availability of less drastic
8 sanctions." Carey, 856 F.2d at 1440 (citation omitted).

9 Unreasonable delay creates a rebuttable presumption of prejudice
10 to the defendants that can be overcome only with an affirmative
11 showing of just cause by the plaintiff. In re Eisen, 31 F.3d
12 1447, 1452-53 (9th Cir. 1994).

13 Here, the first, second, third, and fifth Carey factors
14 militate in favor of dismissal. In particular, Plaintiff has
15 offered no explanation for his apparent failure to correct his
16 deficient service. Thus, he has not rebutted the presumption of
17 prejudice to Defendants. No less drastic sanction is available,
18 as Plaintiff has ceased communicating with the Court. Although
19 the fourth Carey factor weighs against dismissal - as it does in
20 every case - together, the other factors outweigh the public's
21 interest in disposing of the case on its merits. Moreover, as
22 the Magistrate Judge noted in the OSC, the Complaint appears to
23 be frivolous, diminishing the importance of having this case
24 heard on its merits.

25 A pro se litigant must follow the rules of procedure as
26 surely as an attorney. See King v. Atiyeh, 814 F.2d 565, 567
27 (9th Cir. 1987), overruled on other grounds by Lacey v. Maricopa
28 Cnty., 693 F.3d 896, 925-28 (9th Cir. 2012) (en banc). Rule

1 4(m)'s time limit for service is "intended to force parties . . .
2 to be diligent in prosecuting their causes of action." Wei v.
3 Hawaii, 763 F.2d 370, 372 (9th Cir. 1985) (per curiam)
4 (dismissing claim for failure to serve process even though it
5 thereby became time barred). Plaintiff has not been diligent in
6 prosecuting this case.

7 It therefore is ORDERED that this action is dismissed
8 without prejudice under the Court's inherent power to achieve the
9 orderly and expeditious disposition of cases and because
10 Plaintiff has without explanation failed to timely and properly
11 serve the Complaint.

12 LET JUDGMENT BE ENTERED ACCORDINGLY.

13 DATED: September 28, 2018



R. GARY KLAUSNER
U.S. DISTRICT JUDGE

16
17 Presented by:



Jean P. Rosenbluth
U.S. Magistrate Judge